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BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2004-2207

LESUE LYTLE DAGGETT
511 West Goshen Avenue
Visalia, CA 93291

OAH No. 2008010710

Psychiatric Nurse License No.
PT 25751

Respondent.

DECISION

The attached Amended Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Department of Consumer Affairs¹ as the final Decision in the above-entitled matter.

This Decision shall become effective on January 28, 2009.

IT IS SO ORDERED this 10th day of December 2008.



PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

¹Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LESLIE LYTLE DAGGETT
Visalia, California

Psychiatric Technician License No. PT
25751,

Respondent.

Case No. PT-2004-2207

OAH No. 2008010710

AMENDED PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Fresno, California, on May 9, 2008.

Arthur D. Taggart, Senior Assistant Attorney General, represented the complainant, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians.

The respondent, Leslie Lytle Daggett, appeared in propria persona.

The undersigned administrative law judge reopened the record to ask the parties to submit briefs. Mr. Daggett submitted a brief dated June 13, 2007, [sic] that was marked as exhibit R 12. Mr. Taggart submitted a brief dated June 20, 2008, that was marked as exhibit C 10. Mr. Daggett submitted a reply brief dated June 23, 2007, [sic] that was marked as exhibit R 13.

In Mr. Taggart's brief of June 20, 2008, exhibit C 10, at page 4, he said that, if a certain determination were made, he wished to move to conform the pleadings to the proof. The undersigned administrative law judge was not prepared to make the particular determination to which Mr. Taggart referred but was prepared to make related determinations that were different than the pleadings. Government Code section 11516 provides that the agency may order amendment of an accusation even after a case has been submitted. In view of that, it would have been a waste of resources not to have provided Mr. Taggart with an opportunity to move to amend the accusation to conform to the proof.

By a letter dated August 7, 2008, Mr. Taggart moved to amend the accusation to conform to the proof. That letter was marked as exhibit C 11.

Originally, complainant alleged at paragraph 8(b) of the accusation that, on March 7, 2006, respondent was convicted of possession of methamphetamine. And originally, complainant alleged at paragraph 9(b) of the accusation that, on June 9, 2005, respondent possessed methamphetamine, a Schedule II controlled substance.

Mr. Taggart, on behalf of complainant, moved to strike both of those allegations and, in place of the allegation at paragraph 8(b), allege the following:

[O]n March 7, 2006, in the Superior Court of California, County of Fresno, in the case entitled *People of the State of California v. Leslie Lytle Daggett* (Superior Court, Fresno County, 2005, Case No. F05904470-2), respondent was convicted by this court on his plea of no contest of violating Health and Safety Code section 11383, subdivision (c)(1), possession of pseudoephedrine with the intent to manufacture methamphetamine, a felony.

The motion to amend was granted.

By a letter dated August 18, 2008, the undersigned Administrative Law Judge advised the parties that the motion to amend was granted and asked respondent whether, pursuant to Government Code section 11516, he contended that he would be prejudiced "unless the case is reopened to permit the introduction of additional evidence"

By a letter brief dated August 18, 2007,¹ [sic] respondent contended that he would be prejudiced if he were not permitted to present "new evidence and written argument" Respondent requested that "notice be taken of additional matters of fact and law presented here." There follows more than two pages of additional evidence and argument. Respondent also enclosed copies of Business and Professions Code section 4521, subdivisions (a) through (m), highlighted; Business and Professions Code section 4521.2, subdivisions (a) through (c)(6), highlighted; Penal Code section 1203.4a highlighted; and Penal Code section 1203.4 highlighted. Respondent's letter brief with the attachments was marked as exhibit R 14 and received in evidence.

Respondent's letter brief was received on August 22, 2008, and the record was closed on August 22, 2008.

¹ While respondent's letter is dated 2007, it is in response to the undersigned Administrative Law Judge's letter of August 18, 2008.

FACTUAL FINDINGS

LICENSURE

1. On April 13, 1988, the Board of Vocational Nursing and Psychiatric Technicians issued psychiatric technician license number PT 25751 to the respondent, Leslie Lytle Daggett.

FOUR CONVICTIONS BETWEEN JANUARY OF 1986 AND AUGUST OF 1989

2. On January 13, 1986, in the Municipal/Justice Court of California for the County of Tulare, Porterville Judicial District, respondent was convicted of violating Penal Code section 415, fighting, noise, offensive words in a public place. The conviction was on a plea of guilty.

3. On September 16, 1986, in the Municipal Court of California for the County of Tulare, Visalia Judicial District, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .10 percent or higher. The conviction was on a plea of guilty.

4. On October 24, 1988, in the Superior Court of California for the County of Tulare, Porterville Division, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving while under the influence of alcohol, drugs, or both. The conviction was on a plea of nolo contendere.

5. On April 6, 1989, respondent was convicted of drunk driving. The conviction was on a plea of guilty.

6. From 1987 to 1989, respondent worked at Porterville Developmental Center. He testified that his drinking did not interfere with his work.

JULY 1990 LICENSE DISCIPLINE

7. The executive officer of the board filed an accusation against respondent. The accusation was dated April 6, 1989. After a hearing before an administrative law judge, the board placed respondent's license on probation for two years. The effective date of the decision was July 13, 1990. Respondent complied with the conditions of the administrative probation, and the board fully restored his license.

8. As part of the findings of fact in the board's July 13, 1990, decision, the board found as follows:

He was employed as a psychiatric technician at Porterville State Hospital for approximately 22 months and currently is employed as a psychiatric technician at Metropolitan State

Hospital in Norwalk, California. Respondent's supervisors have been aware of his drinking problem, and this problem has not affected his job performance, which is above average.

CONVICTIONS IN 2001 AND 2006

9. In the present proceeding, complainant does not allege the convictions in 1986, 1988, and 1989 as grounds for imposing discipline. Complainant alleges only a 2001 conviction and a 2006 conviction.

10. On July 13, 2001, in the Superior Court of California for the County of Fresno, respondent was convicted of violating Health and Safety Code section 11377, subdivision (b)(2), possession of a dangerous drug, ketamine, a misdemeanor. The conviction was on a plea of no contest. The court entered judgment on September 19, 2006. The court suspended the imposition of sentence and placed respondent on conditional felony probation for three years. As a condition of probation, the court required respondent to serve 90 days in the county jail. The court, however, suspended 80 days of the incarceration on the further condition that respondent comply with the conditions of his probation. As a further condition of probation, the court required respondent to perform 40 hours of community service.

11. The 2001 conviction grew out of respondent's alleged possession of ketamine on June 22, 2001. While respondent pled no contest, he denies that he was in possession of ketamine.

12. The crime of which respondent was convicted in 2001 is one that is substantially related to the qualifications, functions, and duties of a psychiatric technician.

13. On March 7, 2006, in the Superior Court of California for the County of Fresno, respondent was convicted of violating Health and Safety Code section 11383, subdivision (c)(1), possession of Pseudoephedrine with intent to manufacture methamphetamine, a felony.² The conviction was on a plea of no contest. The court suspended the imposition of sentence and placed respondent on formal probation for two years. As a condition of probation, the court required respondent to serve 408 days in the county jail. The court, however, suspended 136 days of the incarceration on the further condition that respondent comply with the conditions of his probation. Thus, the actual jail time was 272 days. As a further condition of probation, the court required respondent to complete a chemical dependency program and attend at least three Alcoholics Anonymous or Narcotics Anonymous meetings a week. The court imposed other standard conditions and required respondent to pay fines and fees.

² In 2006 the Legislature amended section 11383. The substance of former subdivision (c)(1) is now found, in a substantially different form, in subdivisions (a) and (b).

14. A police report of June 9, 2005, states that, in searching respondent's home, the police found recipes for making methamphetamine on respondent's computer. Respondent denies that he caused the recipes to be on his computer. He speculates that his stepson may have put them there.

15. While respondent pled no contest, he denies that he was in possession of Pseudoephedrine and denies that he intended to manufacture methamphetamine. His March 7, 2006, plea to a felony, however, constitutes an admission of all of the elements of the crime – including possession of Pseudoephedrine.

16. The crime of which respondent was convicted in 2006 is one that is substantially related to the qualifications, functions, and duties of a psychiatric technician.

MITIGATION AND EXTENUATION

17. In 2001, respondent married a woman he describes as being involved with gangs and drugs. His wife had an adult son who was in their home frequently. Respondent said there was a lot of drug activity in his house but that he neither participated in it nor knew much about it. As noted above, while respondent pled no contest to both of the possession charges, he denies that he was in possession of ketamine in 2001 and denies that he was in possession of methamphetamine in 2005. Respondent may not collaterally attack his convictions, but Health and Safety Code section 4521, subdivision (f), provides that, "The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline." Respondent testified that he smoked marijuana but did not use or possess ketamine or methamphetamine.

18. Respondent and his wife no longer are together, and respondent plans to obtain a divorce.

SUBSEQUENT HISTORY OF THE 2001 CONVICTION

19. Regarding respondent's 2001 conviction, he petitioned the court for an order pursuant to Penal Code section 1203.4a releasing him from all penalties and disabilities resulting from the conviction. On April 11, 2008, the court granted the petition.

20. Penal Code section 1203.4a, applies to defendants convicted of a misdemeanor and not granted probation. The court did grant probation in connection with the 2001 conviction; therefore, there is a question as to why respondent qualified for relief pursuant to section 1203.4a. There is no question, however, that the court granted respondent's petition pursuant to Penal Code section 1203.4a.

SUBSEQUENT HISTORY OF THE 2006 CONVICTION

21. Regarding certain crimes, courts have discretion to choose to make them punishable as a felony or as a misdemeanor. Such a crime commonly is referred to as a wobbler.

22. Health and Safety Code section 11383, subdivision (c)(1), possession of Pseudoephedrine with intent to manufacture methamphetamine, is not a wobbler. It can be charged only as a felony.

23. Respondent entered his plea to that crime pursuant to a plea agreement. The plea agreement included the district attorney's promise to support the reduction of the charges from a *straight felony* to a "wobbler" if respondent successfully completed a *felony probation*. Because the crime to which respondent pled can be charged only as a felony, the plea agreement implicitly involved respondent's pleading to a lesser offense after completing his *felony probation*. In an August 17, 2007, points and authorities, respondent's attorney said:

Petitioner . . . reached an agreement with the District Attorney to a specific sentencing arrangement where Petitioner would have the charged offense (a straight felony) reduced to a "wobbler" offense with the potential of Penal Code § 17(b)(3) relief available upon the successful completion of felony probation.

24. Respondent's counsel filed a petition for a writ of error *coram nobis* to enforce the terms of the plea bargain agreement. The petition was dated August 17, 2007. Respondent asked the court to vacate the judgment entered on his 2006 plea and permit respondent to enter a plea of *nolo contendere* to a wobbler. The wobbler that respondent's counsel proposed was Health and Safety Code section 11366.5, subdivision (a), knowingly making available a place for the manufacture or distribution of a controlled substance. On August 23, 2007, the court granted the petition. The court, however, on the advice of the district attorney, chose a different wobbler. The court ordered that respondent would be deemed to have pled *nolo contendere* to a violation of Health and Safety Code section 11366, maintaining a place for the use of a controlled substance. The order was entered *nunc pro tunc*.

25. In February of 2008, respondent petitioned the court for early termination of probation; for an order pursuant to Penal Code section 1203.4, subdivision (a), releasing him from all penalties and disabilities resulting from the conviction; and for an order pursuant to Penal Code section 17, subdivision (b), that the offense be declared to be a misdemeanor. On March 17, 2008, the court granted those petitions.

26. Respondent denies that he knowingly made available a place for the manufacture or distribution of a controlled substance. He denies that he maintained a place for the use of a controlled substance. Respondent testified that, while there was a lot of drug activity in his house, he did not know much about it and did not participate in it. He testified that he never saw anyone manufacture methamphetamine in his house.

PSYCHIATRIC PROBLEMS

27. Starting when respondent was 12 years old, he, from time to time, has been treated for psychiatric problems. He has been diagnosed with a major depressive disorder and with borderline personality disorder. In connection with the treatment of respondent's psychiatric problems, he has taken a number of medications.

28. While respondent was in custody in the Fresno County jail, Lena Huang, M.D., prescribed Lexapro for him, an antidepressant he had not taken before. Respondent also takes Wellbutrin. Respondent says the medications he took in the past did not help him, but the Lexapro and Wellbutrin have helped him feel well and strong. He believes his emotional problems now are under complete control.

RESPONDENT'S HISTORY OF ALCOHOL CONSUMPTION

29. From 1986 through 1989, respondent often drank to excess.

30. Respondent testified that, between 1990, when the board placed his license on probation, and 2001, when he got married, he had a long period of sobriety.

31. During the years respondent did drink, he "always drank a lot." During the period of 2001 to 2005, when respondent was not at work, he "stayed drunk."

32. He testified that he has been sober again since he was arrested in 2005.

REHABILITATION

33. Respondent testified that, while he was in jail for the 2006 conviction, he looked at himself and was shocked. He said he began attending AA meetings and turned to religion.

34. On March 21, 2006, respondent, in satisfaction of a condition of his probation, enrolled in New Heights Recovery, an outpatient program for treatment of chemical dependency. The program is operated under the auspices of the Tulare County Alcoholism Council. Respondent completed the program on October 13, 2006. Trina Kirby, Recovery Specialist for New Heights Recovery, wrote progress reports to the court in which she praised respondent for being an inspiration to other men in his group. Between March and October of 2006, respondent had numerous random drug tests. All were negative.

35. Respondent has satisfied all of the conditions of his probations.

36. Respondent testified that he has learned to get along well with people. He said he gets along well with the people in his church and with the people who attend AA meetings. He said he no longer feels that he must always prove that he is right about everything.

37. Respondent declares that he has not used alcohol or any drug other than those prescribed for him since June of 2005. He says he continues to attend AA meetings on a near daily basis. He declares that he will never again drink or use any drug other than those prescribed for him.

38. Respondent declares that he is remorseful for his past conduct and is ashamed that his conduct reflected badly on his profession and ashamed that he caused people who were close to him to feel hurt.

LETTERS AND TESTIMONY IN SUPPORT OF RESPONDENT

39. John Doll testified by telephone. Also, respondent submitted a letter dated April 14, 2008, from Mr. Doll. Respondent and Mr. Doll met in 1987 when respondent was a student intern at the psychiatric facility for Tulare View Hospital. Mr. Doll was on the staff there as a mental health worker and worked with respondent during respondent's internship. He recalls that respondent had no problems in connection with his internship. Two years ago both respondent and Mr. Doll began attending AA meetings in Visalia. Mr. Doll testified that respondent attends almost every day. Mr. Doll is of the opinion that respondent is sober and free from drug use. Mr. Doll wrote:

[Respondent's] spiritual beliefs are, by all indications, genuine and very firmly held. Leslie displays good insight and judgment. He has matured considerably, accepting responsibility for his behavior and being willing to make changes when needed.

My experience with Leslie is that he is now a sober and responsible individual. He is very empathetic, caring, and helpful to others.

40. Rod Craig, who is a priest in Visalia, testified by telephone. Also, respondent submitted a letter dated February 25, 2008, from Father Craig. Respondent's mother is an organist at St. Mary's Church in Visalia, where Father Craig is Parochial Vicar. Respondent began attending St. Mary's when he was released from custody approximately two years ago. Respondent has become very active in the work of the parish. Father Craig said that he "recommended to Monsignor that" respondent "become a sacristan." Approximately one year before respondent and Father Craig met, respondent's mother told Father Craig about respondent's alcoholism and said that it caused her to worry. Father Craig testified that he,

having been an alcoholic, is very familiar with the signs of alcohol abuse. He said respondent comes to the church daily for 7:00 a.m. mass. He helps set up and clear up and never exhibits any signs of alcohol or drug abuse. Father Craig understands that respondent lives with his mother and that she supports them through her work with music. He describes respondent as "a good, productive, helpful man."

41. Bill Blackmon testified by telephone. Also, respondent submitted a letter dated April 8, 2008, from Mr. Blackmon. Respondent and Mr. Blackmon met in February of 2006 when respondent began attending AA meetings in Visalia. Mr. Blackmon has been sober since 1986. He testified that respondent is unemployed, but occasionally people pay him for helping them with matters having to do with computers. Mr. Blackmon is respondent's AA sponsor and talks with him frequently. Mr. Blackmon recalls that, when respondent started attending AA meetings in Visalia, he was having the chairperson sign an attendance verification card for the court. Mr. Blackmon said there "positively has been no evidence that" respondent has "used drugs or alcohol within the past two years." Since February of 2006, respondent has attended AA meetings almost daily. He works all 12 of the steps of the AA program regularly and, since June of 2006, has run an AA meeting on Saturdays. Mr. Blackmon said respondent is kind and empathetic and has been very supportive of people who attend AA meetings and struggle with personal difficulties.

42. James Delahunt, Ph.D., wrote a supporting letter dated April 12, 2008. Dr. Delahunt is a psychologist with Tulare County Adult Mental Health Services. Approximately two years ago, respondent sought medication services from Tulare County Adult Mental Health Services. Dr. Delahunt wrote that he has been personally acquainted with respondent for approximately two years. Dr. Delahunt wrote:

[Respondent] has evidenced considerable growth, and he has shown himself to be a responsible and conscientious person. His insight and judgment are good. He is, by all appearances, truly sorry for his past actions and is working at making amends for them. Mr. Daggett is a law-abiding and sober individual. He has been free of substance abuse during the time I have known him. Mr. Daggett attends 12 step meetings on a daily or near-daily basis.

During his time in custody, Mr. Daggett was seen by a psychiatrist (Lena Huang, MD). He was prescribed antidepressant medication – Lexapro 20 mg daily. He has been on this medication continuously since that time, with very good results. . . . Last year Mr. Daggett went to Tulare County Adult Mental Health Services (where I am employed as a psychologist) seeking medication services. He underwent a mental health assessment, and at that time, it was determined that his mental health and substance abuse problems were in full

remission and that he had no need for specialty mental health services.

My personal and professional opinion is that Mr. Daggett presents as fully rehabilitated.

EMPLOYMENT AND PERFORMANCE EVALUATIONS

43. Respondent has not worked since 2005. He submitted five performance evaluations covering May of 1999 through May of 2000 and October of 2000 through October of 2003. During these periods, respondent worked for the County of Fresno Human Services System as a psychiatric technician. Each overall evaluation was "satisfactory."

COSTS

44. Complainant submitted a certification of costs showing costs of investigation and enforcement in the amount of \$404. The costs are reasonable.

LEGAL CONCLUSIONS

THE 2001 CONVICTION IS A GROUND TO SUSPEND OR REVOKE RESPONDENT'S LICENSE

1. Business and Professions Code section 4521, subdivision (f), provides that the board may suspend or revoke a license because of a conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician. By reason of the matters set forth in Finding 10, it is determined that respondent was convicted of violating Health and Safety Code section 11377, subdivision (b)(2), possession of a dangerous drug, ketamine. By reason of the matters set forth in Finding 12, it is determined that the crime of which respondent was convicted is one that is substantially related to the qualifications, functions, and duties of a psychiatric technician. Thus, there are grounds to suspend or revoke his license.

THE LEGISLATURE MAY PROVIDE FOR ADVERSE CONSEQUENCES AS A RESULT OF A CONVICTION BASED ON A PLEA OF NOLO CONTENDERE

2. As noted in Finding 10, respondent's 2001 conviction was a misdemeanor conviction based on his plea of no contest.

3. *Cartwright v. Board of Chiropractic Examiners*,³ a 1976 case, involved an administrative proceeding to revoke the license of a chiropractor who had pled nolo contendere to a charge of keeping a disorderly house. The licensing board relied on a

³ *Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal. 3d 762.

provision in the Chiropractic Initiative Act that permitted revocation for the conviction of a crime involving moral turpitude. The California Supreme Court held that neither the nolo contendere plea nor the resulting conviction satisfied the requirement of proving that the respondent had been convicted of a crime. The court concluded that a nolo contendere plea is unreliable as proof of guilt because of the myriad motivations an accused may have to enter such a plea. The *Cartwright* court, however, recognized that the Legislature could make a nolo conviction the grounds for adverse consequences. The Court said:

Any inclusion of such convictions as a basis for discipline under section 10 of the Chiropractic Act or similar statutes should be based not on an arbitrary judicial distinction between nolo contendere pleas and the resulting convictions but on a legislative determination that such pleas and convictions are sufficiently reliable indicators of guilt to warrant disciplinary measures for the protection of the public.⁴ [Fns. omitted.]

4. Within a few years after the decision in *Cartwright*, section 10, subdivision (b), of the Chiropractic Initiative Act was amended to provide for discipline of a chiropractic license based on "a conviction following a plea of nolo contendere made to a charge of a felony or of any offense substantially related to the practice of chiropractic."

5. Also, the Legislature enacted a number of statutory changes that substantially narrowed the impact of the *Cartwright* decision.

6. The Legislature amended several licensing statutes to permit discipline based on a conviction flowing from a nolo contendere plea. In 1979 the Legislature enacted Business and Professions Code section 7.5. That section provides, in part, "A conviction within the meaning of this code means a plea or verdict of guilty or *a conviction following a plea of nolo contendere.*" [Italics added.] At the same time, the Legislature added similar language to Business and Professions Code section 480, which authorizes boards to deny a license, and to Business and Professions Code section 490, which authorizes boards to suspend or revoke a license. These provisions make no distinction between a felony and a misdemeanor. Thus, when the term *conviction* is used in any statute in the Business and Professions Code, the term includes a conviction on a nolo contendere plea and it includes such convictions whether the plea was to a felony or a misdemeanor.

7. Regarding matters other than license discipline, the Legislature has created a distinction between a nolo contendere plea to a felony and a nolo contendere plea to a misdemeanor. In 1982 the Legislature amended Penal Code section 1016 and Evidence Code section 1300. As a result of those amendments, *Cartwright* no longer prohibits adverse legal effects based on a plea of nolo contendere to a felony. But in cases other than those

⁴ *Id.* at pp. 773 - 774.

punishable as a felony, Penal Code section 1016 prohibits the use of the plea as an admission in any civil suit based on the act on which the prosecution was based.

8. That distinction, however, is irrelevant to license discipline pursuant to provisions of the Business and Professions Code because of the 1979 changes to that code that make no distinction between felonies and misdemeanors.

In 1995, in *County of Los Angeles v. Civil Service Commission of Los Angeles; Craig Calzada, Real Party in Interest*,⁵ the Court of Appeal followed *Cartwright* in a case concerning the County of Los Angeles's disciplinary rules for county employees. Those rules did not provide that a conviction based on a nolo contendere plea constituted a conviction. The court, citing *Cartwright*, said, "Short of a direct statutory proviso, the common law does not allow a plea of nolo contendere to be a ground for . . . adverse consequences."⁶

9. In 1990, in a case concerning judicial discipline, the California Supreme Court followed *Cartwright*.⁷ Judicial discipline is based on the California Constitution. The Constitution provides for judicial discipline for conviction of a crime based on a plea of no contest to a felony or a crime involving moral turpitude. The Court held that, because the Constitution does not provide for discipline based on a no contest plea to a misdemeanor, that was not permitted.⁸ The Court noted, however, that the Legislature has amended a number of licensing statutes to specify that a nolo contendere plea or a conviction based on a nolo contendere plea is a ground for discipline.⁹

10. Thus, respondent's conviction following a plea of nolo contendere to a misdemeanor is a ground for imposing license discipline.

RELIEF PURSUANT TO PENAL CODE SECTION 1203.4a DOES NOT ELIMINATE A CONVICTION AS A GROUND FOR DENYING OR DISCIPLINING A LICENSE

11. By reason of the matters stated in Finding 19, it is determined that, regarding respondent's 2001 conviction, the court granted respondent's petition for an order pursuant to Penal Code section 1203.4a. That section provides, in part: "[T]he court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted" There are exceptions that are not relevant here.

⁵ *County of Los Angeles v. Civil Service Commission of Los Angeles; Craig Calzada, Real Party in Interest* (1995) 39 Cal.App.4th 620.

⁶ *Id.* at p. 626.

⁷ *Kennick v. Commission on Judicial Performance* (1990) 59 Cal.3d 297.

⁸ *Id.* at p. 321.

⁹ *Id.* at p. 320.

12. Respondent contends that the order pursuant to section 1203.4a releases him from any disciplinary action against his license based on the 2001 conviction. That contention is not well founded. It is determined that denial, suspension, or revocation of a license is not the sort of penalty or disability from which Penal Code section 1203.4a provides that one "shall . . . be released."

13. This determination is based on a line of cases concerning a different but similar section of the Penal Code – section 1203.4.

14. Penal Code section 1203.4 is similar to 1203.4a in that it allows a defendant to petition for a change of plea and dismissal of charges. Section 1203.4, however, is not limited to misdemeanor convictions.

15. There is an important difference in the language of the two sections. Section 1203.4 expressly provides that an order pursuant to that section does not relieve the petitioner, "of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery." That language is absent from section 1203.4a. Respondent contends that, because that language is absent from section 1203.4a, one who obtains an order pursuant to that section has no obligation to disclose his or her conviction to licensing agencies. He further contends that, after one has obtained an order pursuant to section 1203.4a, one's conviction may not be used as a ground to deny a license or to impose license discipline. Respondent's contentions regarding these matters are not well founded.

16. Statutes concerning some licensing programs expressly allow an agency to impose license discipline in spite of an order pursuant to either section 1203.4 or section 1203.4a, but statutes concerning other licensing programs contain such a provision concerning only section 1203.4. For example, Health and Safety Code section 1569.17, subdivision (d)(1), which concerns residential care facilities for the elderly, defines conviction and provides that any action the department of social services may take following the establishment of a conviction may be taken notwithstanding an order pursuant to "Sections 1203.4 and 1203.4a of the Penal Code." On the other hand, Business and Professions Code section 4523, which concerns psychiatric technicians and contains a similar provision, makes no mention of Penal Code section 1203.4a. It provides only that the board may take action "irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code"

17. Respondent contends that, because of these differences, cases concerning Penal Code section 1203.4 should not be used in determining the reach of Penal Code section 1203.4a. The analysis and reasoning of the courts in the cases concerning 1203.4, however, are wholly applicable to section 1203.4a.

18. While neither section 1203.4 nor 1203.4a contains the term *expunge*, relief pursuant to those sections often is referred to as *expungement*.

19. California courts have consistently upheld denial of the right to pursue a particular business or profession on the basis of a conviction in spite of the conviction's having been expunged. And the courts have done that *without relying on statutory language expressly permitting consideration of expunged convictions*.

20. *In re Phillips* (1941) 17 Cal.2d 55, involved the disbarment of an attorney based on a felony conviction that was later expunged pursuant to Penal Code section 1203.4. The Supreme Court rejected the attorney's claim that expungement eliminated the conviction as a ground for disbarment. According to the court, "final judgment of conviction is a fact; and its effect cannot be nullified . . . either by the order of probation or by the later order dismissing the action after judgment." (*Id.* at p. 61.) In *Meyer v. Board of Medical Examiners* (1949) 34 Cal.2d 62, the Board of Medical Examiners had suspended the license of a physician for unprofessional conduct because of a felony conviction that was later expunged. At that time, Business and Professions Code section 2383 defined unprofessional conduct as including a conviction of any offense involving moral turpitude. (*Id.* at p. 64.) Following the reasoning of *Phillips*, the Supreme Court upheld the suspension. The court concluded that discipline by the board is not the type of "penalty" or "disability" from which one is released by Penal Code section 1203.4. (*Id.* at p. 67.) In *Copeland v. Department of Alcoholic Beverage Control* (1966) 241 Cal.App.2d 186, the petitioners' license to sell alcoholic beverages had been revoked based on a felony conviction that later was set aside. The revocation had been pursuant to Business and Professions Code section 24200, subdivision (d), which provided as a ground for revocation, any "plea, verdict, or judgment of guilty . . . to any public offense involving moral turpitude . . ." (*Id.* at p. 187.) The court of appeal upheld the revocation. The court reasoned that, as used in section 1203.4 of the Penal Code, the words "penalties and disabilities" have reference to *criminal* penalties and disabilities or to matters of a kindred nature. But the disciplining of licensees is for the protection of the public in the exercise of the police power and not for the purpose of punishing any licensee. Proceedings to suspend or revoke business or professional licenses are not included among the penalties and disabilities that are released by a dismissal pursuant to section 1203.4. (*Id.* at p. 188.) In *Ready v. Grady* (1966) 243 Cal.App.2d 113, the insurance commissioner had revoked an insurance agent's license because of an expunged felony conviction. The court of appeal upheld the revocation. The court held that the suspension or revocation of a license to practice a profession is not a penalty or disability within the purview of section 1203.4. (*Id.* at p. 116.) The purpose of such revocation "is not the punishment of the licensee, but rather the protection of the public." (*Ibid.*) In *Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, Adams had pled guilty to a felony offense in Kansas that was later expunged. He applied to become a deputy sheriff in Sacramento County. California Government Code section 1029 barred anyone convicted of a felony from employment as a peace officer. At the time Adams applied to become a deputy sheriff, the sheriff concluded that the expungement of the Kansas conviction allowed Adams to become a peace officer in California in spite of section 1029. Later, the sheriff concluded that he had been mistaken in coming to that conclusion. The sheriff removed Adams from his peace officer position and assigned him to a non-sworn position. Adams appealed. The court of appeal compared the Kansas expungement to relief pursuant to section 1203.4. The court referred to the cases cited above and said that relief pursuant to

section 1203.4 was never intended to obliterate the fact that a defendant had been adjudged guilty of a crime. Relief pursuant to 1203.4 merely frees a convicted felon of certain penalties and disabilities of a criminal or like nature. (*Id.* at p. 877-878.)

21. The analysis and reasoning of the courts in all of these cases would be equally applicable to Penal Code section 1203.4a. It is determined that the order granting respondent relief pursuant to Penal Code section 1203.4a did not eliminate his 2001 conviction as a ground for imposing license discipline.

THE 2006 CONVICTION IS A GROUND TO SUSPEND OR REVOKE RESPONDENT'S LICENSE

22. Business and Professions Code section 4521, subdivision (a), provides that the board may suspend or revoke the license of a licensee who engages in unprofessional conduct. By reason of the matters set forth in Finding 13, it is determined that respondent was convicted of violating Health and Safety Code section 11383, subdivision (c)(1), possession of Pseudoephedrine with intent to manufacture methamphetamine, a felony. From the conviction, one must infer that respondent planned to possess methamphetamine or furnish it to someone else. Methamphetamine is a controlled substance.¹⁰ Business and Professions Code section 4521, subdivision (a), provides examples of acts of unprofessional conduct. Subdivision (a)(4) provides that it is unprofessional conduct to "obtain or possess in violation of law . . . or furnish . . . to another, any controlled substance . . ." Business and Professions Code section 4521, subdivision (a), provides that the meaning of unprofessional conduct is not limited to the examples provided in the subdivision. It is determined that possession of Pseudoephedrine with intent to manufacture methamphetamine constitutes unprofessional conduct.

23. Respondent, by possessing Pseudoephedrine with intent to manufacture methamphetamine, engaged in unprofessional conduct. Thus, pursuant to Business and Professions Code section 4521, subdivision (a), there are grounds to suspend or revoke his license.

IN THIS CASE, THE PETITION FOR A WRIT OF ERROR CORAM NOBIS WAS NOT USED TO CORRECT AN ERROR. THUS, THERE IS NO REASON TO TREAT THE ORDER ON THAT WRIT AS OBLITERATING THE ORIGINAL PLEA.

24. Approximately 18 months after respondent's 2006 conviction, the court vacated his nolo contendere plea to possession of Pseudoephedrine with intent to manufacture methamphetamine and permitted him to enter a plea of nolo contendere to a different violation – a violation of Health and Safety Code section 11366, maintaining a place for the use of a controlled substance. The order was dated August 23, 2007, and entered nunc pro tunc.

¹⁰ Health & Saf. Code § 11055, subd., (d)(2).

25. By reason of the matters set forth in Finding 25, it is determined that, in March of 2008, the court granted a petition for early termination of probation; a petition for an order pursuant to Penal Code section 1203.4, subdivision (a), releasing respondent from all penalties and disabilities resulting from the conviction; and a petition for an order pursuant to Penal Code section 17, subdivision (b), that the offense be declared a misdemeanor.

26. Respondent denies that he possessed Pseudoephedrine with intent to manufacture methamphetamine. He also denies that he maintained a place for the use of a controlled substance. Respondent testified that, while there was a lot of drug activity in his house, he did not know much about it and did not participate in it. He testified that he never saw anyone manufacture methamphetamine in his house.

27. Respondent contends that the effect of the court's August 2007 and March 2008 orders is to place him in the position of never having pled to a violation of possession of Pseudoephedrine with intent to manufacture methamphetamine, a felony. He contends that the effect is to place him in the position of having originally pled nolo contendere to maintaining a place for the use of a controlled substance, a misdemeanor.

28. Respondent is correct that his plea to Health and Safety Code section 11366, maintaining a place for the use of a controlled substance, was reduced to a misdemeanor for all purposes. Penal Code section 17, subdivision (b)(3), in part, concerns a wobbler for which a court grants probation without imposition of sentence and thereafter declares the offense to be a misdemeanor. In that circumstance, the crime "is a misdemeanor for all purposes."

29. If a defendant has obtained an order pursuant to Penal Code section 17, subdivision (b)(3), a licensing agency may not treat a wobbler as a felony. In *Gebrenicael v. California Commission on Teacher Credentialing* (2004) 118 Cal.App.4th 1477, 1481-1483, the court dealt with a case in which the commission had denied a teaching credential because of the applicant's felony conviction. The applicant, however, had obtained an order pursuant to Penal Code section 17, subdivision (b)(3), and the court held that the commission could not treat the conviction as a felony. The *Gebrenicael* court said:

[O]nce a court has reduced a wobbler to a misdemeanor pursuant to Penal Code section 17, the crime is thereafter regarded as a misdemeanor "for all purposes." This unambiguous language means what it says, and unless the Legislature states otherwise, a person such as plaintiff stands convicted of a misdemeanor, not a felony, for all purposes . . .

30. Counsel for complainant contends that *Gebrenicael* should not be held to apply to licensing cases governed by the Business and Professions Code, and he cites *Krain v. Medical Board of California*, 71 Cal.App.4th 1416. *Krain*, however, does not support complainant's contention. In *Krain*, the court accepted the proposition that the wobbler had been reduced to a misdemeanor. The issue *Krain* raised was whether the Medical Board

could discipline him for a misdemeanor conviction. He contended it could not. The court disagreed.

31. Respondent's contention concerning the effect of the court's August 2007 and March 2008 orders fails, nevertheless, because the nunc pro tunc order vacating his nolo contendere plea to possession of Pseudoephedrine with intent to manufacture methamphetamine did not eliminate his original plea as a ground for imposing discipline. That is, his original plea to a felony continues to be available as a ground for imposing discipline.

32. If the petition for a writ of error *coram nobis* had been for the purpose of correcting an error, there might be reason to treat the nunc pro tunc order as obliterating the original plea. But the petition was not to correct an error. In an August 17, 2007, points and authorities, respondent's attorney said:

Petitioner . . . reached an agreement with the District Attorney to a specific sentencing arrangement where Petitioner would have the charged offense (a straight felony) reduced to a "wobbler" offense with the potential of Penal Code § 17(b)(3) relief available upon the successful completion of felony probation.

33. Here the petition for a writ of error *coram nobis* was used to carry out the terms of a plea agreement – not to correct an error. *And the agreement specifically contemplated respondent's pleading to a felony and completing a felony probation.*

MATTERS IN AGGRAVATION

34. By reason of the matters set forth in Findings 2 through 8, it is determined that the board previously disciplined respondent's license for convictions related to alcohol abuse. The prior discipline is a matter in aggravation, which should be considered in fixing the degree of discipline that is appropriate in the present case.

35. By reason of the matters set forth in Findings 2 through 8 and 29 and 31, it is determined that, at the time of respondent's 2005 arrest for the conduct that resulted in his 2006 conviction, he had a serious problem with alcohol dependency.

EVIDENCE THAT IT WOULD BE APPROPRIATE TO ISSUE A PROBATIONARY LICENSE

36. A few things suggest that outright revocation is the appropriate license discipline. The matters in aggravation are troubling. From 1986 through 1989 respondent suffered alcohol related convictions. Based on those convictions, the board disciplined his license. That should have been the end of respondent's alcohol abuse and the end of his engaging in criminal conduct. It is troubling that he had such a serious relapse. And while there is substantial evidence that respondent has refrained from drinking, he has refrained

while on probation and at risk of having his probation revoked. Respondent was on probation until March 17, 2008.

37. There is compelling evidence, however, that respondent has made substantial progress toward rehabilitation and that it would not be against the public interest for him to hold a probationary license subject to appropriate conditions. On October 13, 2006, respondent completed the New Heights Recovery program, an outpatient program for treatment of chemical dependency. Trina Kirby, Recovery Specialist for New Heights Recovery, wrote progress reports to the court in which she praised respondent for being an inspiration to other men in his group. Between March and October of 2006, respondent had numerous random drug tests, and all were negative. Respondent has satisfied all of the conditions of his probations.

38. The observations of the people who testified and wrote in support of respondent are important. Mr. Doll has known respondent since 1987, when respondent was a student intern at the psychiatric facility for Tulare View Hospital. Respondent and Mr. Doll have attended the same AA meetings for two years. Mr. Doll testified that respondent attends almost every day. Mr. Doll is of the opinion that respondent is sober and free from drug use. Mr. Doll finds respondent to be very empathetic, caring, and helpful to others.

39. Rod Craig, who is a priest in Visalia, testified that respondent began attending St. Mary's when he was released from custody approximately two years ago. Respondent has become very active in the work of the parish. Father Craig testified that he, having been an alcoholic, is very familiar with the signs of alcohol abuse. He said respondent comes to the church daily for 7:00 a.m. mass. He helps set up and clean up and never exhibits any signs of alcohol or drug abuse. He describes respondent as "a good, productive, helpful man."

40. Bill Blackmon, respondent's AA sponsor, talks with him frequently. Mr. Blackmon said there "positively has been no evidence that" respondent has "used drugs or alcohol within the past two years." Since February of 2006, respondent has attended AA meetings almost daily. He works all 12 of the steps of the AA program regularly and, since June of 2006, has run an AA meeting on Saturdays. Mr. Blackmon said respondent is kind and empathetic and has been very supportive of people who attend AA meetings and struggle with personal difficulties.

41. Dr. Delahunt wrote that respondent has evidenced considerable growth and has shown himself to be a responsible and conscientious person. His insight and judgment are good. He is, by all appearances, truly sorry for his past actions and is working at making amends for them.

42. Respondent's commitment, also, is important. He testified that he is committed to continuing with his sobriety. Respondent testified that he has learned to get along well with people. He said he gets along well with the people in his church and with the

people who attend AA meetings. He said he no longer feels that he must always prove that he is right about everything.

43. On balance, it is determined that the public interest does not require outright revocation and that the appropriate discipline is a stayed revocation with probation.

THE CONDITIONS TO WHICH RESPONDENT'S LICENSE SHOULD BE SUBJECT

44. In cases in which a licensee has been convicted of an offense that involves alcohol or drug abuse and in cases involving mental illness, the board's standard conditions for probation provide that examination by a physician, evaluation by a psychologist, and participation in psychotherapy usually are required.

45. And while respondent has a history of alcohol abuse, his 2006 conviction did not involve alcohol or drug abuse. Also, while he has a history of major depressive disorder and borderline personality disorder, there is no evidence that those conditions led to the conviction.

46. What is even more important, there is no evidence that his alcohol abuse or mental health problems ever affected his work. In the board's 1990 license discipline decision, the board found that respondent had worked at Porterville State Hospital for approximately 22 months; that at the time of the disciplinary decision, he was working at Metropolitan State Hospital; that his supervisors had been aware of his drinking problem; and this problem had not affected his job performance, which was above average. And the five performance evaluations covering May of 1999 through May of 2000 and October of 2000 through October of 2003 were all satisfactory.

47. Dr. Delahunt's conclusions are significant. In 2007, respondent underwent a mental health assessment at Tulare County Adult Mental Health Services. It was determined that his mental health and substance abuse problems were in full remission and that he had no need for specialty mental health services.

48. It is determined that, under these circumstances, protection of the public does not require that respondent be examined by a physician, evaluated by a psychologist, or participate in psychotherapy.

49. It is determined that respondent's license should be subject to the standard conditions and to those conditions that allow the board to be confident that he is continuing to abstain from the use of alcohol and drugs.

COSTS

50. By reason of the matters set forth in Finding 44, it is determined that the board's costs in this matter were \$404 and that, within the terms of Business and Professions Code section 125.3, those costs were reasonable.

51. In *Zuckerman v. State Board of Chiropractic Examiners*,¹¹ a case in which the State Board of Chiropractic Examiners had disciplined a license, the Supreme Court of California dealt with the issue of cost recovery. The court held that “the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that ... [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The court established five rules that an agency must observe in assessing the amount to be charged. To some extent, these rules are similar to matters one would consider in determining whether costs are “reasonable” as is required by Business and Professions Code section 125.3. The court’s rules, however, go beyond considerations of whether the costs are reasonable. The court said:

[T]he Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor’s “subjective good faith belief in the merits of his or her position” [Citation] and whether the chiropractor has raised a “colorable challenge” to the proposed discipline [Citation.] Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [Citation] the Board must determine that the chiropractor will be financially able to make later payments. Finally the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a chiropractor engaged in relatively innocuous misconduct.¹²

52. In this case, complainant proved that respondent engaged in the conduct that is the primary focus of the accusation. However, respondent had a good faith belief in the merits of his position and raised a reasonable challenge as to, at least, the severity of the proposed discipline. Respondent, however, offered no evidence that assessing the full costs of investigation and prosecution against him would unfairly penalize him.

53. Moreover, this was not a case in which the board conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

¹¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

¹² *Id.* at p. 45.

54. That leaves one final matter to be considered. Will respondent be financially able to make payments to reimburse the board for its costs? Respondent did not present evidence that would support a finding that he is not financially able to pay the cost recovery.

55. Thus, application of the *Zuckerman* rules does not lead to a conclusion that the cost award should be reduced or eliminated.

56. The board, as is required by *Zuckerman*, must determine whether a payment schedule is necessary so that respondent will be financially able to pay the board's costs.

ORDER

Psychiatric technician license number PT 25751 issued to respondent, Leslie Lytle Daggett, is revoked. The revocation, however, is stayed for two years, and a probationary license shall be issued subject to the following conditions:

1. Respondent shall obey all federal, state, and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of all violations of the law to the board within five days of occurrence. Respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the board within thirty days of the effective date of this decision unless the board determines that respondent submitted fingerprint cards as part of his license application. Respondent shall submit a recent 2" x 2" photograph of himself within thirty days of the effective date of this decision.
2. Respondent shall cooperate with the board's representatives in their monitoring and investigation of respondent's compliance with the probation program.
3. Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the board. The reports shall certify and document compliance with all of the conditions of probation.
4. Within five days of a change of residence or mailing address, respondent shall notify the board, in writing, of his new address and any change in his work or home telephone number.
5. If respondent leaves California to reside or practice in another state, he shall notify the board in writing within five days, and he shall notify the board in writing within five days of his return to California. The period of probation shall not run during any time respondent is residing or practicing outside of California.
6. Respondent shall give a copy of this decision to all of his current health care profession employers. And he shall cause each of his current employers to send a letter to the board within ten days of the effective date of this decision in which the

employer acknowledges receipt of a copy of this decision. Before accepting employment with any other employer in a health care profession, respondent shall give a copy of this decision to the prospective employer and shall cause the prospective employer to send a letter to the board acknowledging receipt of a copy of this decision. For purposes of this condition, "health care profession" includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

7. Respondent shall cause each health care employer who employs him to submit quarterly reports to the board. The reports shall be on a form provided by the board and shall include a performance evaluation and such other information as the board may require.

8. Respondent shall notify the board in writing within five days of any change in his employment status. If respondent is terminated from any nursing or health care related employment, he shall notify the board of the termination in writing, and he shall give a full explanation of the circumstances surrounding the termination.

9. Respondent shall appear in person at interviews or meetings as the board or its designated representatives direct.

10. Respondent shall practice in his licensed capacity in the State of California. This practice shall consist of no less than six continuous months each year and no less than twenty hours per week.

11. Respondent shall not work for a nurses' registry, in a private duty position, in a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a board approved continuing education course except as approved in writing by the board. Respondent shall work only on regularly assigned, identified, and predetermined work sites and shall not work in a float capacity except as approved in writing by the board.

12. Respondent shall not commence any new employment without first obtaining the board's approval in writing of the level of supervision to be provided for him.

13. Respondent shall not function as a charge nurse. That is, he shall not work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel except as approved in writing by the board. Respondent shall not function as a supervising psychiatric technician except as approved in writing by the board.

14. At all times, including any period during which suspension or probation is tolled, respondent shall maintain an active current license with the board.

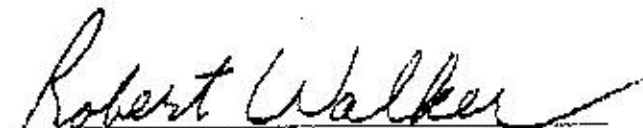
15. If respondent's license expires by operation of law or otherwise, his license, on renewal or reinstatement, shall be subject to all of the conditions of probation not previously satisfied.
16. Respondent shall pay the board \$404 in costs. Respondent shall make timely payment as directed. Any failure to make a payment shall be a violation of probation.
17. The board, as is required by *Zuckerman*, shall determine whether a payment schedule is necessary so that respondent will be financially able to pay the board's costs.
18. The board may defer the collection of payments for up to one year if respondent demonstrates financial hardship and enters into an agreement to reimburse the unpaid costs within one year.
19. Except as provided above, the board shall not renew or reinstate respondent's license if he has failed to pay all the costs as ordered.
20. Within thirty (30) days of the effective date of this decision, respondent shall enter a rehabilitation and monitoring program specified by the board. Respondent shall successfully complete a treatment contract that the board recommends and approves. Components of the treatment contract shall be relevant to the violation and to respondent's current status in recovery or rehabilitation. The components may include, but are not limited to, restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. Respondent shall pay the cost of the program.
21. Within five days of the effective date of this decision, respondent shall begin attending a chemical dependency support group, for example, Alcoholics Anonymous, Narcotics Anonymous, or Nurse Support Group. Respondent shall submit verified documentation of his attendance with each quarterly report. Respondent shall continue attending during the entire term of probation.
22. Respondent shall completely abstain from the use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and shall completely abstain from the use or possession of dangerous drugs as defined in Business and Professions Code sections 4021 and 4022 except when they are lawfully prescribed by a licensed practitioner for a bona fide illness.
23. Respondent shall completely abstain from the use of alcoholic beverages.

24. Respondent shall immediately submit to biological fluid testing at his cost, on request by the board or its designee. There will be no confidentiality in test results. The party interpreting the results shall immediately report any positive result to the board and to respondent's current employer.

25. If respondent violates a condition of his probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license. If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or if the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation, the probationary period shall automatically be extended and shall not expire until the board has acted on the accusation or petition.

26. On respondent's successful completion of probation and satisfaction of all other conditions and requirements for licensure, the board will issue an unrestricted license to him.

DATED: September 19, 2008

A handwritten signature in cursive script, reading "Robert Walker", written in black ink over a horizontal line.

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

FILED

DEC 19 2007

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. PT-2004-2207

LESLIE LYTLLE DAGGETT
511 West Goshen Avenue
Visalia, California 93291

A C C U S A T I O N

Psychiatric Technician License No. PT 25751

Respondent.

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

License History

2. On or about April 13, 1988, the Board issued Psychiatric Technician License Number PT 25751 ("license") to Leslie Lytle Daggett ("Respondent"). The license will expire on July 31, 2009, unless renewed.

///

JURISDICTION

3. Section 4520 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

4. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 4545, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

5. Code section 4521 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter, for any of the following reasons:

(a) Unprofessional conduct, which includes but is not limited to any of the following:

(4) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 7. **DRUG**

2 "Methamphetamine," a Schedule II controlled substance pursuant to Health and
3 Safety Code section 11055, subdivision (d)(2).

4 "Ketalar," a brand name for Ketamine, is a dangerous drug within the meaning of
5 Code section 4022, in that it requires a prescription under federal law.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Convictions)**

8 8. Respondent is subject to disciplinary action under Code section 4521,
9 subdivision (f), in that Respondent was convicted of crimes substantially related to the
10 qualifications, functions, and duties of a licensed psychiatric technician, as follows:

11 a. On or about July 13, 2001, in the Superior Court of California, County of
12 Fresno, in the case entitled, *People of the State of California v. Leslie Lytle Daggett* (Super. Ct
13 Fresno County, 2001, Case No. FO1908347-8), Respondent was convicted by the court on his
14 plea of no contest of violating Health and Safety Code section 11377, subdivision (b)(2)
15 (Possession of a Dangerous Drug, to wit: Ketamine), a felony.

16 b. On or about March 7, 2006, in the Superior Court of California, County of
17 Fresno, in the case entitled, *People of the State of California v. Leslie Lytle Daggett* (Super. Ct
18 Fresno County, 2005, Case No. FO5904470-2), Respondent was convicted by the court on his
19 plea of no contest of violating Health and Safety Code section 11383, subdivision (c)(1)
20 (Possession of a Controlled Substance, to wit: Methamphetamine), a felony.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Possessed Controlled Substances and/or Dangerous Drugs)**

23 9. Respondent is subject to disciplinary action under Code section 4521,
24 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 4521,
25 subdivision (a)(4), in that while licensed as a psychiatric technician, Respondent possessed the
26 following controlled substances, in violation of law:

27 ///

28 ///

- 1 a. On June 22, 2001, Respondent possessed Katamine, a dangerous drug.
2 b. On June 9, 2005, Respondent possessed Methamphetamine, a Schedule II
3 controlled substance.

4 **PRIOR DISCIPLINE**

5 a. In a prior disciplinary matter, in the case entitled, Before the Board of
6 Vocational Nurse and Psychiatric Technician Examiners, *In the Matter of the Accusation*
7 *Against: Leslie L. Daggett, PT No. 25751*. Effective July 13, 1990, the Board revoked
8 Respondent's Psychiatric Technician License No. 25751. However, the revocation was stayed
9 and his license was placed on two years, with terms and conditions of probation. The Decision is
10 now final and incorporated herein as Exhibit A.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
14 Technicians issue a decision:

- 15 1. Revoking or suspending Psychiatric Technician License Number PT
16 25751 issued to Leslie Lytle Daggett;
17 2. Ordering Leslie Lytle Daggett to pay the Board the reasonable costs of the
18 investigation and enforcement of this case pursuant to Code section 125.3;
19 3. Taking such other and further action as deemed necessary and proper.
20

21 DATED: December 19, 2007.


22
23 
24 TERESA BELLO-JONES, J.D., M.S.N., R.N.
25 Executive Officer
26 Board of Vocational Nursing and Psychiatric Technicians
27 Department of Consumer Affairs
28 State of California
Complainant

Exhibit A
In the Matter of the Accusation Against: Leslie L. Daggett,
PT No. 25751

COPY

BEFORE THE
BOARD OF VOCATIONAL NURSE AND
PSYCHIATRIC TECHNICIAN EXAMINERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

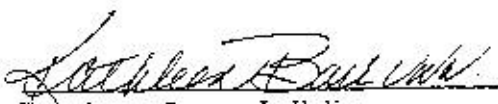
In the Matter of the Accusation)	
Against:)	No. T-484
)	
LESLIE L. DAGGETT)	OAH No. N-34652
511 W. Goshen)	
Visalia, CA 93291)	
)	
Psychiatric Technician)	
License No. 25751)	
)	
Respondent.)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nurse and Psychiatric Technician Examiners as its Decision in the above-entitled matter.

This Decision shall become effective on July 13, 1990.

IT IS SO ORDERED June 13, 1990.


Kathleen Barr, L.V.N.
Board President

BEFORE THE
BOARD OF VOCATIONAL NURSE AND
PSYCHIATRIC TECHNICIAN EXAMINERS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. T-484
)	
LESLIE L. DAGGETT)	OAH No. N-34652
511 W. Goshen)	
Visalia, CA 93291)	
)	
Psychiatric Technician)	
License No. 25751)	
)	
Respondent.)	

PROPOSED DECISION

On February 20, 1990, in Fresno, California, Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Willard Jones, Deputy Attorney General, represented complainant.

Ken Murch, Labor Relations Consultant, represented respondent.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant, Billie Haynes, R.N., M.Ed., made and filed the Accusation in her official capacity as Executive Officer, Board of Vocational Nurse and Psychiatric Technician Examiners, Department of Consumer Affairs, and not otherwise.

II

On April 13, 1988, the Board of Vocational Nurse and Psychiatric Technician Examiners (hereinafter referred to as "Board")

issued Psychiatric Technician License No. 25751 to Leslie L. Daggett (hereinafter "respondent"). Respondent's license has been in full force and effect at all times pertinent herein.

III

On or about November 7, 1987, the Board received an application for licensure as a psychiatric technician from respondent.

IV

The respondent has been convicted of the following crimes which are substantially related to the qualifications, functions and duties of a licensed psychiatric technician:

- a. On January 13, 1986, respondent was convicted on a plea of guilty of violating provisions of Penal Code section 415 (fighting, noise, offensive words in a public place) in the Municipal/Justice Court of California, County of Tulare, Porterville Judicial District, Case No. 301207, entitled People of the State of California vs. Leslie Lytle Daggett.
- b. On September 16, 1986, respondent was convicted on a plea of guilty of violating provisions of Vehicle Code section 23152(b) (driving when blood-alcohol level was .10 percent or higher) in the Municipal Court of California, County of Tulare, Visalia Judicial District, Case No. 84256, entitled People of the State of California vs. Leslie Lyle Daggett.
- c. On October 24, 1988, respondent was convicted on a plea of nolo contendere of violating provisions of Vehicle Code section 23152(a) (driving while under the influence of alcohol or drugs, or both) in the Municipal/Justice Court of California, County of Tulare, Porterville Judicial District, Case No. 039087, entitled People of the State of California vs. Leslie Lytle Daggett.
- d. On April 6, 1989 respondent was arrested for drunk driving and he plead guilty in August 1989. Respondent served 70 days jail time for this conviction.

V

Respondent is a 28 year old male with a history of drinking problems going back to his parents' bitter divorce in 1985. Respondent's father was an alcoholic. He was employed as a

psychiatric technician at Porterville State Hospital for approximately 22 months and currently is employed as a psychiatric technician at Metropolitan State Hospital in Norwalk, California. Respondent's supervisors have been aware of his drinking problem and this problem has not affected his job performance, which is above average. Respondent is currently enrolled in a chemical dependency program at Kaiser Hospital which he attends three nights a week for two and one half hours each. Respondent has not had a drink since June 20, 1989 (eight months ago). Respondent is subject to random urine testing and has signed a release making the test results available to interested parties. Respondent has no objection to continued random urine testing. He is confident that he will continue to refrain from alcoholic beverages because of his improved regard for his and other persons lives. Changing his job place and environment by moving away from Porterville has helped his recovery. He has a good relationship with his mother. Respondent prefers working with mentally ill patients, rather than the developmentally disabled patients he worked with at Porterville State Hospital. Respondent likes his job, feels that he is effective, and is now keenly aware that his drinking problem could jeopardize his career, which is very important to him. Respondent wants to go back to school and receive his Registered Nursing license. His current employer will assist him by providing financial support and flexible hours.

DETERMINATION OF ISSUES

I

Cause for discipline of respondent's license was established for violation of Business and Professions Code section 4521(f) by reason of Finding IV.

II

Respondent has demonstrated that he is making progress toward rehabilitation, his alcohol problem has not affected his job performance, and with adequate terms and conditions on his license, will not be a detriment to the public interest.

ORDER

License No. 25751 issued to respondent Leslie L. Daggett is revoked. However, said revocation is stayed and respondent is placed on probation for two years upon the following terms and conditions:

1. Respondent shall immediately commence participation in a Board approved, alcohol rehabilitation program. Respondent shall cause the counselor or supervisor of such program to submit quarterly written reports to the Board commencing 30 days from the effective date of this decision stating the progress of such


rehabilitation and respondent's attendance in the program. Respondent shall not consume alcohol during the rehabilitation program.

2. Upon written demand by the Board or its representatives, respondent shall submit to tests and samplings for the possible detection of alcohol, narcotics, dangerous drugs and/or controlled substances. These tests and samples shall be conducted and taken by an entity or agency acceptable to the Board. Positive test results shall be promptly reported to the Board and respondent's current employer.
3. Respondent shall obey all laws, rules and regulations pertaining to respondent's licensed practice.
4. Respondent shall fully comply with the Probation Program established by the Board and shall cooperate with the representatives of the Board.
5. Respondent shall immediately notify the Board of any and all changes of address. In the event respondent should leave California to reside outside of the state, respondent must notify the Board, in writing, of the dates of departure and return. Periods of residency or practice outside of the State of California will not apply to the reduction of this probationary period.
6. Respondent shall submit quarterly written probation reports to the Board describing respondent's activities in the health care profession. Further, respondent shall within five (5) days of any arrest by law enforcement authorities submit to the Board a full and detailed written account of any such arrest.
7. If employed during probation in any area of the health care profession which includes, but is not limited to, Emergency Medical Technician, Emergency Room Technician, Home Health Aide, Medical Technician Assistant, Medical Receptionist, Nurse's Aide, Orderly, Paramedic, and Registered Nurse, respondent shall notify respondent's employer of respondent's probation status upon the effective date of this Decision. If respondent applies for work in the health care profession during probation, respondent shall inform the prospective

employer of respondent's probationary status prior to accepting such employment. Respondent must inform the Board within ten (10) days if respondent changes employers in any area of the health care profession. Thereafter, the employer shall acknowledge understanding of the probationary status of the licensee by signing the required written reports submitted by the respondent to the Board.

8. An initial probation visit will be required by the respondent, within thirty (30) days of the effective date of the Decision, for the purpose of introducing the respondent to the Board's representative and familiarizing respondent with the specific probation conditions and requirements.
9. Respondent shall report in person to a Board representative biannually, or upon request, for the purpose of ensuring compliance with the Board-imposed probationary terms and conditions.
10. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to vacate stay is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final.

Dated: March 4, 1990



KEITH A. LEVY
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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4 Sacramento, California 94244-2550
Telephone: (916) 324-5327

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5 Attorneys for Complainant
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8 BEFORE THE
BOARD OF VOCATIONAL NURSE AND
9 PSYCHIATRIC TECHNICIAN EXAMINERS
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation)
12 Against:)

NO. T-484

13 LESLIE L. DAGGETT)
511 W. Goshen)
14 Visalia, CA 93291)
Psychiatric Technician)
15 License No. 25751,)

ACCUSATION

16 Respondent.)

17 _____ Billie Haynes, R.N., M.Ed., for causes for discipline,
18 alleges:
19

20 1. Complainant Billie Haynes, R.N., M.Ed., makes and
21 files this accusation in her official capacity as Executive
22 Officer, Board of Vocational Nurse and Psychiatric Technician
23 Examiners, Department of Consumer Affairs.
24

25 2. On April 13, 1988, the Board of Vocational Nurse
26 and Psychiatric Technician Examiners issued psychiatric
27 technician license number 25751 to Leslie L. Daggett. The

1 license has been in full force and effect at all times pertinent
2 herein and will expire on July 31, 1989, unless renewed.

3

4 3. Under Business and Professions Code section 4520,
5 the Board of Vocational Nurse and Psychiatric Technician
6 Examiners may discipline any licensed psychiatric technician for
7 any reason provided in Article 3 of the Psychiatric Technicians
8 Law.

9 Under Business and Professions Code section 118(b), the
10 expiration of a license shall not deprive the board of
11 jurisdiction to proceed with a disciplinary action during the
12 period within which the license may be renewed, restored,
13 reissued or reinstated. Under Business and Professions Code
14 section 4545, the board may renew an expired license at any time
15 within four years after the expiration.

16 Under Business and Professions Code section 490, the
17 Board of Vocational Nurse and Psychiatric Technician Examiners
18 may suspend or revoke a license when it finds that the licensee
19 has been convicted of a crime or knowingly made a false statement
20 of fact required to be revealed on the application for licensure.

21

22 4. On or about November 7, 1987, the Board of
23 Vocational Nurse and Psychiatric Technician Examiners received an
24 application for licensure as a psychiatric technician from
25 Leslie L. Daggett. On November 7, 1987, Leslie L. Daggett
26 certified under penalty of perjury that the information contained
27 in the application was true and correct.

1 5. Respondent has subjected his license to discipline
2 under Business and Professions Code section 4521(b) in that he
3 obtained his license to practice as a psychiatric technician by
4 fraud, misrepresentation or mistake in that he failed to disclose
5 in his application for licensure that he had been convicted of
6 the following crimes:

7 a. On August 27, 1986, he was convicted by the Court
8 on a plea of guilty of violating provisions of Penal Code 415
9 (fighting, noise, offensive words in a public place) in the
10 Municipal/Justice Court of California, County of Tulare,
11 Porterville Judicial District, case number 30120, entitled People
12 of the State of California v. Leslie Lytle Daggett.

13 b. On September 16, 1986, he was convicted by the
14 Court on a plea of guilty of violating provisions of Vehicle Code
15 section 23152(b) (driving when blood-alcohol level was .10
16 percent or higher) in the Municipal Court of California, County
17 of Tulare, Visalia Judicial District, case number 84256, entitled
18 People of the State of California v. Leslie Lytle Daggett.

19
20 6. Respondent has subjected his license to discipline
21 under Business and Professions Code section 490 in that he
22 knowingly made a false statement of fact required to be revealed
23 in the application for licensure by failing to disclose that he
24 had been convicted of crimes, as alleged in paragraph 5.

25
26 7. Respondent has subjected his license to discipline
27 under Business and Professions Code section 4521(f) in that he

1 was convicted of crimes that are substantially related to the
2 qualifications, functions or duties of a licensed psychiatric
3 technician, as defined in Title 16, California Code of
4 Regulations, section 2578, in the following respects:

5 a. On August 27, 1986, he was convicted by the Court
6 on a plea of guilty of violating provisions of Penal Code 415
7 (fighting, noise, offensive words in a public place) in the
8 Municipal/Justice Court of California, County of Tulare,
9 Porterville Judicial District, case number 30120, entitled People
10 of the State of California v. Leslie Lytle Daggett.

11 b. On October 24, 1988, he was convicted by the Court
12 on a plea of nolo contendere of violating provisions of Vehicle
13 Code section 23152(a) (driving while under the influence of
14 alcohol or drugs, or both) in the Municipal/Justice Court of
15 California, County of Tulare, Porterville Judicial District, case
16 number 39087, entitled People of the State of California v.
17 Leslie Lytle Daggett.

18 c. On September 16, 1986, he was convicted by the
19 Court on a plea of guilty of violating provisions of Vehicle Code
20 section 23152(b) (driving when blood-alcohol level was .10
21 percent or higher) in the Municipal Court of California, County
22 of Tulare, Visalia Judicial District, case number 84256, entitled
23 People of the State of California v. Leslie Lytle Daggett.
24

25 8. Respondent has subjected his license to discipline
26 under Business and Professions Code section 490 in that he was
27 convicted of crimes substantially related to the qualifications,

1 functions or duties of a licensed psychiatric technician, as
2 alleged in paragraph 7.

3

4 WHEREFORE, complainant prays that a hearing be held and
5 that the Board of Vocational Nurse and Psychiatric Technician
6 Examiners make its order:

7 1. Revoking or suspending psychiatric technician
8 license number 25751, issued to Leslie L. Daggett.

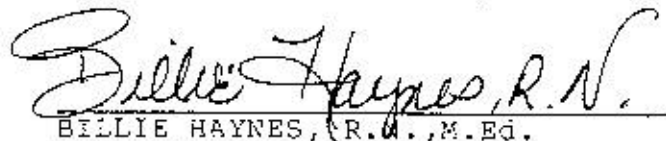
9 2. Taking such other and further action as may be
10 deemed proper and appropriate.

11 DATED: 4/6/89

12

13

14



15

BILLIE HAYNES, R.N., M.Ed.
Executive Officer
Board of Vocational Nurse and
Psychiatric Technician Examiners
Department of Consumer Affairs
State of California

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18

Complainant

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